

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues )  
Against: )

SHALENA THERESE GARZA )

Case No. 800-2015-012363

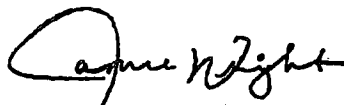
Applicant )  
\_\_\_\_\_) )

**ORDER DENYING PETITION FOR RECONSIDERATION**

The Petition filed by Shalena Therese Garza, for the reconsideration of the decision in the above-entitled matter having been read and considered by the Medical Board of California, is hereby denied.

This Decision remains effective at 5:00 p.m. on October 2, 2017.

**IT IS SO ORDERED:** September 27, 2017



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Jamie Wright, J.D., Chair  
Panel A

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against: )

SHALENA THERESE GARZA )

\_\_\_\_\_  
Applicant )

) MBC No. 800-2015-012363

) **ORDER GRANTING STAY**

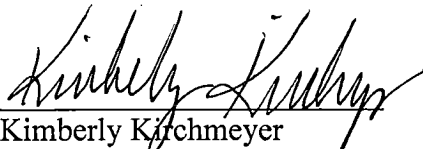
) (Government Code Section 11521)

Applicant, Shalena Therese Garza, has filed a Petition for Reconsideration of the Decision in this matter with an effective date of September 22, 2017.

Execution is stayed until October 2, 2017.

This stay is granted solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration.

DATED: September 15, 2017

  
Kimberly Kirchmeyer  
Executive Director  
Medical Board of California

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of Statement of Issues  
Against:

SHALENA GARZA,

Applicant.

Case No. 800-2015-012363

OAH No. 2015120952

**DECISION AFTER NON-ADOPTION**

This matter came before Laurie R. Pearlman, Administrative Law Judge (ALJ), Office of Administrative Hearings, in Los Angeles, California, on January 31, 2017.

Trina L. Saunders, Deputy Attorney General (DAG), represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.

Shalena Garza (Applicant) was present and was represented by John D. Bishop, Attorney at Law.

At Complainant's request, a protective order was issued sealing confidential records in this matter.

Oral and documentary evidence was received at the hearing, oral argument was presented, and the matter was submitted for decision on January 31, 2017.

A Proposed Decision was issued on March 1, 2017. On May 25, 2017, Panel A of the Board issued an Order of Non-Adoption of Proposed Decision. Oral argument on the matter was heard by the Panel on July 27, 2017, with ALJ Jill Schlichtmann presiding. Complainant was represented by DAG Saunders. Applicant was present, and represented herself. Panel A, having read and considered the entire record, including the transcripts and the exhibits, and having considered the written and oral arguments presented by Applicant and Complainant, hereby makes and enters this decision on the matter.

## FACTUAL FINDINGS

### *Jurisdictional Matters*

1. The Board denied Applicant's application for a Physician's and Surgeon's Certificate on March 10, 2015. Complainant filed the Statement of Issues on October 27, 2015, in her official capacity. Applicant made a timely request for hearing and this matter ensued.

### *Applications for Postgraduate Training Authorization Letter*

2. On November 4, 2009, the Board received an "Initial and Updated Application for Physician's and Surgeon's License or Postgraduate Training Authorization Letter," from Applicant. On the application, Applicant checked the "no" box in response to the following question: "Were any limitations or special requirements placed upon you for clinical performance, discipline, or for any other reason?" On the last page of the application, Applicant initialed the box next to the statement, "I understand that falsification or misrepresentation of any item or response on this application or any attachment thereto is a sufficient basis for denying or revoking a license." Applicant signed the application under penalty of perjury, declaring that all of the information contained in the application was true and correct, and her signature was notarized.

3. On April 28, 2011, the Board received an updated "Initial and Updated Application for Physician's and Surgeon's License or Postgraduate Training Authorization Letter." Applicant checked the "no" box on the application in response to the following question: "Were any limitations or special requirements placed upon you for clinical performance, discipline, or for any other reason?"

4. On May 11, 2011, the Indiana University School of Medicine Director informed the Board that the medical school had placed a limitation on Applicant due to concerns about her inability to adequately care for or admit a full patient load on a continuous basis. Schedule changes were made to place Applicant on rotations where she would not experience the type of full patient case load her peers were able to manage.

### *2014 Application for Physician's and Surgeon's License*

5. The Board received a Physician's and Surgeon's License application from Applicant, which was notarized on May 2, 2014. In the application, Applicant answered "yes" to questions 24, 25, 27, 31 and 32, contained in the section of the application pertaining to unusual circumstances during postgraduate training. These questions dealt with receiving partial or no credit for a postgraduate training program as a result of taking a leave of absence or a break from postgraduate training. This could be due to resigning from a program; having practice limitations imposed due to clinical performance; having issues with professionalism, medical knowledge, or discipline; having a postgraduate training program not renewed or offered; or for any other reason.

### *Indiana University Internal Medicine Residency Program*

6a. After receiving Applicant's license application, the Board received a Certificate of Completion of ACGME<sup>1</sup> Postgraduate Training from the Indiana University School of Medicine, in which information regarding the Applicant's performance in the Indiana University Internal Medicine Residency Program (Indiana Program) was provided.

6b. Applicant began her postgraduate program training as a postgraduate year one (PGYI) resident on June 24, 2010. Due to concerns about her ability to adequately care for or admit a full patient load on a continuous basis, schedule changes were made to place Applicant in rotations where she would not experience the full patient care load as managed by her peers on a continuous basis. The Indiana Program required that Applicant seek psychological counseling/assessment in relation to her stressors, when it was noted that she was not functioning well, as compared to her peers. Applicant took several leaves of absences to deal with stressors. She did not receive full credit for her time in the Indiana Program, receiving only five and one-half months credit at a marginal rating. Applicant resigned from the Indiana Program on February 9, 2011. The Indiana Program also certified that Applicant had not completed the required minimum of four months of general medicine as part of its postgraduate training program.

6c. The Indiana Program provided the Board with documentation of its concerns as to Applicant's professionalism and competence. The Applicant provided the Board with her explanations as to her performance and the events which had transpired during her participation in the Indiana Program.

### *Oklahoma Anatomic Pathology/Clinical Pathology Residency Program*

7a. After receiving Applicant's application for licensure, the Board received a Certificate of Completion of ACGME Postgraduate Training from the University of Oklahoma Health Science Center. Information regarding Applicant's performance in the Oklahoma Anatomic Pathology/Clinical Pathology Residency Program (Oklahoma Program) was provided.

7b. Applicant began her postgraduate program training as a resident in the Oklahoma Program on July 1, 2012. On November 20, 2013, Applicant was placed on a corrective action plan for remediation and was "directed to improve her fund of medical knowledge and knowledge application." On March 3, 2014, Applicant was removed from clinical pathology call, but she remained on anatomic call. On June 8, 2014, Applicant's clinical call was reinstated, but she was not placed on the call schedule for either clinical or anatomic call prior to her resignation from the Oklahoma Program on June 30, 2014. (Exhibit 18.)

7c. On February 28, 2014, Applicant was informed of the Oklahoma Program's decision not to renew her contract, effective June 30, 2014. Applicant was "allowed to continue training under close supervision and restrictions related to on call activities for the remainder of the academic year." (Exhibit 18, page 12.) The Oklahoma Program accepted her

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<sup>1</sup> The Accreditation Council for Graduate Medical Education (ACGME) evaluates and accredits medical residency and internship programs in the United States.

resignation, effective June 30, 2014. The Oklahoma Program also certified that Applicant had not completed the minimum requirement of four months of general medicine as part of its postgraduate training program.

7d. The Oklahoma Program provided the Board with documentation of its concerns as to Applicant's professionalism and competence. The Applicant provided the Board with explanations as to her performance and the events which had transpired during her participation in the Oklahoma Program.

#### *Denial of Application*

8. The Board denied Applicant's application for a Physician's and Surgeon's Certificate on March 10, 2015. The Board's denial was based upon its review of the Applicant's Application, reports from the Indiana Program and the Oklahoma Program, and Applicant's explanations of her performance and the events which had transpired during her participation in both residency programs. The Board determined that there were serious global deficiencies which Applicant was unable to remediate despite being afforded opportunities to do so.

#### *Complainant's Expert Mark Servis, M.D.*

9. Mark Servis, M.D. testified as an expert witness on behalf of Complainant. He prepared a written report. (Exhibit 27.) Dr. Servis is licensed as a physician in California. At the University of California, Davis School of Medicine (Davis), he is the Residency Program Director in Psychiatry, and serves as the Senior Associate Dean of Medical Education. Dr. Servis has been a residency program director and medical educator for 25 years and has been Senior Associate Dean of Medical Education at Davis for five years.

10. In 2012, Applicant received a mandated mental health assessment and a brief period of counseling with psychologist Suzanne Kunkle, Ph.D., to regulate anxiety and improve her mood while she was a PGY1 resident in internal medicine in the Indiana Program. Applicant stated that she had "panic-like symptoms" and "difficulty with concentration and memory" and decision-making. (Exhibit 13.) Subsequently, in June 2012, Applicant underwent a one-time outpatient psychiatric assessment by Jeff S. Seaman, M.D., while she was a pathology resident in the Oklahoma Program. Dr. Seaman provided her with a referral to a psychotherapist for "general mentoring and enhanced mindfulness." (Exhibit 11.)

11. Richard Perla, Ph.D., LMFT, diagnosed Applicant with Post-Traumatic Stress Disorder (PTSD), with depressive and anxiety symptoms, on January 28, 2015. Dr. Perla recommended that Applicant participate in individual weekly psychotherapy sessions for six months.

12. Applicant had multiple clinical performance problems while a PGY1 resident in the Indiana Program. Deficiencies in her performance were well documented by several evaluators on her clinical rotations and spanned multiple competency domains. Applicant's most consistent deficiencies were in the areas of organizing and synthesizing clinical information, presenting cases verbally, time management and efficiency, and accepting constructive feedback. As a result,

she received only five-and-one-half months of credit at a marginal rating for her eight months in the residency program, and resigned from the Indiana Program on February 9, 2011. The Indiana Program placed limitations on Applicant's work. Due to concerns about her inability to adequately care for or admit a full patient load on a continuous basis, schedule changes were made to place Applicant on rotations where she would not experience the full patient case load, as her peers managed to do on a continuous basis. Additionally, Applicant was granted small stretches of time off from scheduled work, on an as needed basis, in order to deal with stressors.

13a. Applicant had multiple clinical performance problems during her time as a pathology resident in the Oklahoma Program from July 2012 to June 2014. These deficiencies in her performance were well documented by several evaluators on her clinical rotations and spanned multiple competency domains. Dr. Servis reviewed over 150 pages of evaluations of Applicant's performance in her postgraduate training. He noted that she was rarely rated as "proficient" or "accomplished" by evaluators in specific milestones across six core graduation competencies for residency training in pathology. Dr. Servis opined that Applicant had significant mental health and clinical performance problems in medical school, as well as in her postgraduate training in the Indiana Program and the Oklahoma Program. He noted that there is a pattern of chronic instability in Applicant's personal life. As a result, she took multiple leaves of absence to manage personal stress due to financial, relational, and academic issues in medical school and during residency.

13b. At the Oklahoma Program, Applicant's most consistent deficiencies were identical to those at the Indiana Program, with the addition of concerns about medical knowledge in selected areas of pathology and concerns about professionalism. These deficiencies led to the issuance of a corrective action plan on November 20, 2013. The plan contained four specified performance deficiencies and six required corrective actions. When Applicant failed to successfully remediate these deficiencies, her contract was not renewed and her training in the Oklahoma Program ended in June 2014.

13c. Dr. Servis noted that Applicant's overall performance while a resident in the Oklahoma Program was summarized in December 2013 by Dr. Gregory Blakey, Director of Clinical Pathology. Dr. Blakey stated that:

Dr. Garza's performance has been marked by a pattern of unprofessional behaviors and difficulty interpreting data and integrating conceptual information. Dr. Garza's inability to constructively take feedback exacerbates her performance deficits. Furthermore, her lack of insight is particularly troubling, as becoming competent in the practice of pathology requires a resident to 'know what they don't know.' These short comings portend a poor prognosis for effectively navigating the practice of clinical pathology, with its complex managerial, medical, scientific and regulatory spheres . . .

In sum, I do not believe that Dr. Garza will be able to practice independently as a pathologist, barring large improvements in her ability to interpret lab data, recognize the limits of her knowledge, use good judgment, and behave more professionally. Therefore, if Dr. Garza does not make significant progress in remedying these deficiencies this academic year, I would recommend that she be released from our residency program.

(Exhibits 18 and 27.)

14. Dr. Servis was particularly concerned by the consistency of Applicant's unsatisfactory performance evaluations across two different residency programs, as well as the chronic and persistent nature of her deficiencies. Dr. Servis noted that Applicant minimized these issues in her correspondence with the Board.

15. Dr. Servis noted that Applicant had failed to disclose to the Board that the Indiana Program had placed limitations on her during her training. In the April 2011 application she submitted to the Board, Applicant answered "no" when asked whether any limitations or special requirements had been placed upon her for clinical performance or any other reason. Her program director at the Indiana Program described such limitations in his May 11, 2011 letter to the Medical Board. Applicant also failed to disclose to the Board that she had undergone a mandated mental health assessment while a resident in the Indiana Program. Dr. Servis noted that in her June 22, 2011 response to follow-up inquiries from the Board, Applicant attributes these discrepancies in her reporting to "misunderstandings." Dr. Servis opined that when these discrepancies are paired with the multiple professionalism lapses noted in her evaluations during Applicant's postgraduate training, a reasonable conclusion is to see the discrepancies as further examples of her professionalism deficiencies.

16. Dr. Servis opined that Applicant should not be issued an unrestricted Physician's and Surgeon's License, based on the fact that during her postgraduate training, Applicant did not receive evaluations documenting that she consistently achieved the core competencies necessary to safely assume the unrestricted practice of medicine. While she did complete two years of postgraduate training in the Oklahoma Program, these were not "satisfactory" continuous training months and she failed to successfully complete the Corrective Action Plan, which led to the non-renewal of her contract. Her five-and-one-half months of credit in the Indiana Program were rated as "marginal" and do not constitute the required twelve continuous months. Accordingly, Applicant does not meet the requirements for California medical licensure. She failed to satisfactorily complete two years of ACGME-accredited postgraduate training, and she did not fulfill the requirement that each year of postgraduate training must consist of twelve months of satisfactory continuous training within the same program. Additionally, Applicant has a documented pattern of consistent and diagnosed mental health problems which have contributed to her performance problems and remain insufficiently addressed at this time.

17. Dr. Servis further opined that Applicant should not be issued a probationary license. Given the chronicity and extent of her deficiencies in residency training, which at times encompass all six of the six ACGME core competencies, further postgraduate training is needed



to remediate these deficiencies to the level where she can practice safely without supervision. Of particular concern to Dr. Servis are Applicant's professionalism deficiencies, including her failure to disclose to the Board limitations placed on her during both of her residency programs, and a mental health assessment requirement placed on her during her residency training in the Indiana Program.

18. Dr. Servis opined that the nature and extent of her deficiencies is too great to allow Applicant to treat California consumers outside of the highly structured and supervised environment of a residency training program.

19. In his report, Dr. Servis noted that because Applicant is close to the three year limit for ACGME-approved postgraduate training without a license for graduates of international medical schools<sup>2</sup>, acceptance into a California postgraduate training program may prove to be elusive at this point. Dr. Servis proposed that a limited probationary license be granted, after Applicant has completed six months of weekly psychotherapy sessions for her diagnosed PTSD, on the condition that Applicant be accepted into postgraduate training to complete her residency training.

#### *Applicant's Evidence*

20. Applicant testified at the hearing. She is 44 years old. She got married in 2010 and has two children, ages 19 and five. Applicant currently works as a registered nurse (RN). She first became licensed as an RN in Indiana in 1998 and became a licensed RN in California in 2001. Applicant works as an RN in the emergency room at Martin Luther King, Jr. Community Hospital in Los Angeles. She has never had any discipline against her RN license and has received recognition for her work as an RN.

21. Applicant "really wanted to go to medical school" since nursing "wasn't enough intellectually." In 2005, she began medical school at American University of the Caribbean in St. Maarten. She took three leaves of absence to deal with a rental home she owned and to work as a nurse. Applicant graduated from medical school in February 2010 number six out of 70 students.

22. In the Indiana Program, Applicant worked at a busy hospital. She requested a schedule change to enable her to do non-call rotations in order to enable her to care for her then 12-year-old son, who was staying with her that summer. Applicant testified that the Indiana Program did not tell her they had concerns about her ability to handle a full patient load, nor was she informed that any limits had been placed on her. She claimed that was the reason she did not check "yes" to those questions on the Board application.

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<sup>2</sup> An international medical graduate (IMG) must complete 24 months of training to be eligible for licensure by the Board. The final 12 months must be continuous and in a single program. Further, an IMG must be licensed by the end of the 36th month of training. In calculating these months, the Board counts all approved ACGME training, whether or not credit was granted. [http://www.mbc.ca.gov/Applicants/Physicians\\_and\\_Surgeons/](http://www.mbc.ca.gov/Applicants/Physicians_and_Surgeons/).

23. Applicant took a leave of absence during the Indiana Program. She asserted that she ultimately resigned from the Indiana Program in February 2011 because she "didn't see eye to eye with the program director." She opined that the evaluators were "harsh" because they "were trying to defend themselves as to why [she] had resigned during their rotation." She admitted that she "was a little defensive [to criticism] in the beginning."

24. Applicant attributed her difficulties in the Indiana Program and Oklahoma Program to a myriad of personal, financial, and relational problems, including a new marriage, pregnancy, the stress of a long distance relationship with her husband who was living in California, and tenants who did not pay rent and negatively impacted her credit rating.

25. Applicant insisted that most of her postgraduate performance evaluations were positive and that she was doing very well in her residencies. The Oklahoma Program was a four year pathology residency program, but Applicant only remained in the program from June 2012 until June 2014. She "grew to love pathology" and would like to continue in that field. She contended that her difficulties at the Oklahoma Program occurred after she filed a complaint at the end of her first year of training with the Office of Compliance at Oklahoma University for sexual harassment and gender discrimination against a physician affiliated with the Oklahoma Program. She believes that the Associate Dean and her Program Director orchestrated a series of negative evaluations from faculty attending physicians in retaliation for her complaint. Applicant asserts that "out of nowhere" she was given a corrective action plan. However, Applicant's performance evaluations showed deficiencies, both before and after the harassment complaint.

26. Applicant characterizes as "misunderstandings" her failure to disclose in her April 2011 application that limitations had been placed on her during her training in the Indiana Program or that she had undergone a mandated mental health assessment while a resident at Indiana University.

27. Applicant "always saw someone" for therapy. She voluntarily sought treatment from Dr. Perla and has continued to see him once or twice per month. Dr. Perla recommended that she see him weekly, but she was financially unable to do so because the amount of her copays had increased. Dr. Perla has helped Applicant address her PTSD, which is "not severe." She attributes this condition to her experiences in the Oklahoma Program and to "problems with [her] career now."

### **LEGAL CONCLUSIONS**

1. Business and Professions Code (Code) sections 475, Subdivision (a)(4), and 480, subdivision (a)(3)(A), provide that a license may be denied for commission of any act which, if done by a licensee, would be grounds for license suspension or revocation.

2. Code sections 475, subdivision (a)(1), and 480, subdivisions (a)(2) and (d), provide that a license may be denied for knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

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3. Code section 480, subdivision (a)(2), provides that the Board may deny a license on the grounds that the applicant has done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself.

4. Code section 2221, subdivision (a), provides that the Board may deny a physician's and surgeon's certificate to any applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of his or her license.

5. Code section 2234, subdivisions (a), (d), (e), and (f), provide that the Board shall take action against any licensee who is charged with unprofessional conduct. Unprofessional conduct includes incompetence, commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon, and any conduct which would warrant the denial of a certificate.

6. Unprofessional conduct under Code section 2234 is conduct which breaches the rules of ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal. App.3d 564, 575).

7. Code section 2096, subdivisions (b) and (c), provide that an applicant whose professional instruction was acquired in a country other than the United States or Canada shall have satisfactorily completed at least two years of postgraduate training, which includes at least four months of general medicine in an approved postgraduate training program.

8. An applicant for a license bears the burden of proving fitness for the requested license. (*Coffin v. Department of Alcoholic Beverage Control* (2006) 139 Cal.App.4th 471.) The standard of proof in such matters is the preponderance of the evidence. (See Evid. Code, § 115.)

9. Cause exists to deny the application for a Physician's and Surgeon's Certificate pursuant to Code section 2096 in that Applicant has not completed the required minimum of four months of general medicine training as part of her postgraduate training program. Both the Indiana Program and Oklahoma Program certified that Applicant has not completed the required minimum of four months of general medicine training as part of their postgraduate training programs, as set forth in Factual Findings 2-19.

10. Cause exists to deny the application for a Physician's and Surgeon's Certificate pursuant to Code sections 475, subdivision (a)(4), 480, subdivision (a)(3)(A), and 2234, subdivision (d), in that Applicant is guilty of unprofessional conduct and incompetence, which if done by a licensee, would be grounds for suspension or revocation of license, as set forth in Factual Findings 2-19.

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11. Cause exists to deny the application for a Physician's and Surgeon's Certificate pursuant to Code sections 475, subdivision (a)(I); 475, subdivision (a)(4); 480, subdivisions (a)(2) and (d); 2234, subdivisions (e) and (f), in that Applicant is guilty of conduct which, if done by a licensee, would be grounds for suspension or revocation of licensure, as set forth in Factual Findings 2-19.

12. During her postgraduate training, Applicant did not receive evaluations documenting that she consistently achieved the core competencies necessary to safely assume the unrestricted practice of medicine. While she did complete two years of postgraduate training in the Oklahoma Program, these were not "satisfactory" continuous training months and she failed to successfully complete the corrective action plan, which led to the non-renewal of her contract. Her five-and-one-half months of credit in the Indiana Program were rated as "marginal" and did not constitute twelve continuous months. Accordingly, Applicant does not currently meet the requirements for an unrestricted California medical license. She did not satisfactorily complete two years of ACGME-accredited postgraduate training, and she did not fulfill the requirement that each year of postgraduate training must consist of twelve months of satisfactory continuous training within the same program. Additionally, Applicant has been diagnosed with PTSD, which may not yet have been sufficiently addressed. Applicant also failed to disclose to the Board limitations and a mental health assessment requirement placed on her during her residency training. She did disclose other potentially negative information, such as taking leaves of absence.

13. In her written and oral arguments, Applicant expressed resistance and suspicion about government/Board-ordered psychotherapy. Her ability to adequately manage stress, however, has been a recurrent problem throughout her medical training, and the Board is obligated to evaluate and address this issue if Applicant is to be granted a license, even on a probationary basis. Pursuant to Code sections 2001.1 and 2229, protection of the public is the highest priority for the Board. The order that follows is appropriate and necessary for the protection of the public, and will aid in Applicant's rehabilitation so that she may demonstrate through a period of probation that she is safe and competent to practice independently.

### **ORDER**

Shalena Garza's application for a full and unrestricted Physician's and Surgeon's Certificate is denied. However, Applicant shall be issued a probationary license for five (5) years on the condition that Applicant be accepted into an ACGME-approved postgraduate residency training program in California. Applicant's first three years of practice shall be successfully performed in an ACGME-approved residency program.

#### **1. Psychiatric Evaluation – Condition Precedent**

Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Board or its designee, Applicant shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written

evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Applicant shall pay the cost of all psychiatric evaluations and psychological testing.

Applicant shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

Applicant shall not engage in the practice of medicine until notified by the Board or its designee that Applicant is mentally fit to practice medicine safely. The period of time that Applicant is not practicing medicine shall not be counted toward completion of the term of probation.

**2. Prohibited Practice**

During the first three years of probation, Applicant is prohibited from practicing medicine outside of an ACGME-approved postgraduate residency program in California.

**3. Psychotherapy**

Within 60 calendar days of the effective date of this Decision, Applicant shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, Applicant shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Applicant shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Applicant shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require Applicant to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, Applicant is found to be mentally unfit to undertake the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over her license and the period of probation shall be extended until the Board determines that she is mentally fit to undertake the practice of medicine without restrictions.

Applicant shall pay the cost of all psychotherapy and psychiatric evaluations.

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**4. Notification**

Within seven (7) days of the effective date of this Decision, Applicant shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Applicant, at any other facility where Applicant engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Applicant. Applicant shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

**5. Supervision of Physician Assistants and Advanced Practice Nurses**

During probation, Applicant is prohibited from supervising physician assistants and advanced practice nurses.

**6. Obey All Laws**

Applicant shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

**7. Quarterly Declarations**

Applicant shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Applicant shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

**8. General Probation Requirements**

**Compliance with Probation Unit**

Applicant shall comply with the Board's probation unit.

**Address Changes**

Applicant shall, at all times, keep the Board informed of Applicant's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

### Place of Practice

Applicant shall not engage in the practice of medicine in Applicant's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

### License Renewal

Applicant shall maintain a current and renewed California physician's and surgeon's license.

### Travel or Residence Outside California

Applicant shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Applicant should leave the State of California to reside or to practice Applicant shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

## **9. Interview with the Board or its Designee**

Applicant shall be available in person upon request for interviews either at Applicant's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

## **10. Non-practice While on Probation**

Applicant shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Applicant's return to practice. Non-practice is defined as any period of time Applicant is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Applicant resides in California and is considered to be in non-practice, Applicant shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Applicant from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Applicant's period of non-practice while on probation exceeds 18 calendar months, Applicant shall successfully complete the Federation of State Medical Board's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program

that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Applicant's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for an Applicant residing outside of California, will relieve Applicant of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

#### **11. Completion of Probation**

Applicant shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Applicant's certificate shall be fully restored.

#### **12. Violation of Probation**

Failure to fully comply with any term or condition of probation is a violation of probation. If Applicant violates probation in any respect, the Board, after giving Applicant notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Applicant during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

#### **13. License Surrender**

Following the effective date of this Decision, if Applicant ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Applicant may request to surrender his or her license. The Board reserves the right to evaluate Applicant's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Applicant shall within 15 calendar days deliver Applicant's wallet and wall certificate to the Board or its designee and Applicant shall no longer practice medicine. Applicant will no longer be subject to the terms and conditions of probation. If Applicant re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

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**14. Probation Monitoring Costs**

Applicant shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

This Decision shall become effective at 5:00 p.m. on September 22, 2017.

IT IS SO ORDERED August 23, 2017.

A handwritten signature in black ink, appearing to read "Jamie Wright", is written over a horizontal line.

Jamie Wright, J.D., Chair  
Panel A

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of Statement of Issues Against: )

SHALENA THERESE GARZA )

Applicant )

Case No.: 800-2015-012363

OAH No.: 2015120952

**ORDER OF NON-ADOPTION  
OF PROPOSED DECISION**

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted**. A panel of the Medical Board of California (Board) will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written argument as the parties may wish to submit directed to the question of whether the proposed penalty should be modified. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

To order a copy of the transcript, please contact Kennedy Court Reporters, 920 West 17th Street, Santa Ana, CA 92706. The telephone number is (714) 835-0366

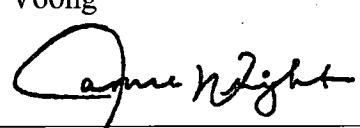
To order a copy of the exhibits, please submit a written request to this Board.

**In addition, oral argument will only be scheduled if a party files a request for oral argument with the Board within 20 days from the date of this notice.** If a timely request is filed, the Board will serve all parties with written notice of the time, date and place for oral argument. Oral argument shall be directed only to the question of whether the proposed penalty should be modified. Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Panel. The Board directs the parties attention to Title 16 of the California Code of Regulations, sections 1364.30 and 1364.32 for additional requirements regarding the submission of oral and written argument.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

MEDICAL BOARD OF CALIFORNIA  
2005 Evergreen Street, Suite 1200  
Sacramento, CA 95815-3831  
(916) 263-2349  
Attention: Kristy Voong

Date: May 25, 2017

  
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Jamie Wright, J.D., Chair  
Panel A

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of Statement of Issues  
Against:

SHALENA GARZA,

Applicant.

Case No. 800-2015-012363

OAH No. 2015120952

**PROPOSED DECISION**

This matter came before Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California, on January 31, 2017.

Trina L. Saunders, Deputy Attorney General, represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.

Shalena Garza (Applicant) was present and was represented by John D. Bishop, Attorney at Law.

At Complainant's request, a protective order was issued sealing confidential records in this matter.

Oral and documentary evidence was received at the hearing, oral argument was presented, and the matter was submitted for decision on January 31, 2017.

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## FACTUAL FINDINGS

### *Jurisdictional Matters*

1. The Board denied Applicant's application for a Physician's and Surgeon's Certificate on March 10, 2015. Complainant filed the Statement of Issues on October 27, 2015, in her official capacity. Applicant made a timely request for hearing and this matter ensued.

### *Applications for Postgraduate Training Authorization Letter*

2. On November 4, 2009, the Board received an "Initial and Updated Application for Physician's and Surgeon's License or Postgraduate Training Authorization Letter," from Applicant. On the application, Applicant checked the "no" box in response to the following question: "Were any limitations or special requirements placed upon you for clinical performance, discipline, or for any other reason?" On the last page of the application, Applicant initialed the box next to the statement, "I understand that falsification or misrepresentation of any item or response on this application or any attachment thereto is a sufficient basis for denying or revoking a license." Applicant signed the application under penalty of perjury, declaring that all of the information contained in the application was true and correct, and her signature was notarized.

3. On April 28, 2011, the Board received an updated "Initial and Updated Application for Physician's and Surgeon's License or Postgraduate Training Authorization Letter." Applicant checked the "no" box on the application in response to the following question: "Were any limitations or special requirements placed upon you for clinical performance, discipline, or for any other reason?"

4. On May 11, 2011, the Indiana University School of Medicine Director informed the Board that the medical school had placed a limitation on Applicant due to concerns about her inability to adequately care for or admit a full patient load on a continuous basis. Schedule changes were made to place Applicant on rotations where she would not experience the type of full patient case load her peers were able to manage.

### *2014 Application for Physician's and Surgeon's License*

5. The Board received a Physician's and Surgeon's License application from Applicant, which was notarized on May 2, 2014. In the application, Applicant answered "yes" to questions 24, 25, 27, 31 and 32, contained in the section of the application pertaining to unusual circumstances during postgraduate training. These questions dealt with receiving partial or no credit for a postgraduate training program as a result of taking a leave of absence or a break from postgraduate training. This could be due to resigning from a program; having practice limitations imposed due to clinical performance; having issues with professionalism, medical knowledge, or discipline; having a postgraduate training program not renewed or offered; or for any other reason.

### *Indiana University Internal Medicine Residency Program*

6a. After receiving Applicant's license application, the Board received a Certificate of Completion of ACGME<sup>1</sup> Postgraduate Training from the Indiana University School of Medicine, in which information regarding the Applicant's performance in the Indiana University Internal Medicine Residency Program (Indiana Program) was provided.

6b. Applicant began her postgraduate program training as a post-graduate year one (PGY1) resident on June 24, 2010. Due to concerns about her ability to adequately care for or admit a full patient load on a continuous basis, schedule changes were made to place Applicant in rotations where she would not experience the full patient care load as managed by her peers on a continuous basis. The Indiana Program required that Applicant seek psychological counseling/assessment in relation to her stressors, when it was noted that she was not functioning well, as compared to her peers. Applicant took several leaves of absences to deal with stressors. She did not receive full credit for her time in the Indiana Program, receiving only five and one-half months credit at a marginal rating. Applicant resigned from the Indiana Program on February 9, 2011. The Indiana Program also certified that Applicant had not completed the required minimum of four months of general medicine as part of its postgraduate training program.

6c. The Indiana Program provided the Board with documentation of its concerns as to Applicant's professionalism and competence. The Applicant provided the Board with her explanations as to her performance and the events which had transpired during her participation in the Indiana Program.

### *Oklahoma Anatomic Pathology/Clinical Pathology Residency Program*

7a. After receiving Applicant's application for licensure, the Board received a Certificate of Completion of ACGME Postgraduate Training from the University of Oklahoma Health Science Center. Information regarding Applicant's performance in the Oklahoma Anatomic Pathology/Clinical Pathology Residency Program (Oklahoma Program) was provided.

7b. Applicant began her postgraduate program training as a resident in the Oklahoma Program on July 1, 2012. On November 20, 2013, Applicant was placed on a corrective action plan for remediation and was "directed to improve her fund of medical knowledge and knowledge application." On March 3, 2014, Applicant was removed from clinical pathology call, but she remained on anatomic call. On June 8, 2014, Applicant's clinical call was reinstated, but she was not placed on the call schedule for either clinical or anatomic call prior to her resignation from the Oklahoma Program on June 30, 2014. (Exhibit 18.)

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<sup>1</sup> The Accreditation Council for Graduate Medical Education (ACGME) evaluates and accredits medical residency and internship programs in the United States.

7c. On February 28, 2014, Applicant was informed of the Oklahoma Program's decision not to renew her contract, effective June 30, 2014. Applicant was "allowed to continue training under close supervision and restrictions related to on call activities for the remainder of the academic year." (Exhibit 18, page 12.) The Oklahoma Program accepted her resignation, effective June 30, 2014. The Oklahoma Program also certified that Applicant had not completed the minimum requirement of four months of general medicine as part of its postgraduate training program.

7d. The Oklahoma Program provided the Board with documentation of its concerns as to Applicant's professionalism and competence. The Applicant provided the Board with explanations as to her performance and the events which had transpired during her participation in the Oklahoma Program.

#### *Denial of Application*

8. The Board denied Applicant's application for a Physician's and Surgeon's Certificate on March 10, 2015. The Board's denial was based upon its review of the Applicant's Application, reports from the Indiana Program and the Oklahoma Program, and Applicant's explanations of her performance and the events which had transpired during her participation in both residency programs. The Board determined that there were serious global deficiencies which Applicant was unable to remediate despite being afforded opportunities to do so.

#### *Complainant's Expert Mark Servis, M.D.*

9. Mark Servis, M.D. testified as an expert witness on behalf of Complainant. He prepared a written report. (Exhibit 27.) Dr. Servis is licensed as a physician in California. At the University of California, Davis School of Medicine (Davis), he is the Residency Program Director in Psychiatry, and serves as the Senior Associate Dean of Medical Education. Dr. Servis has been a residency program director and medical educator for 25 years and has been Senior Associate Dean of Medical Education at Davis for five years.

10. In 2012, Applicant received a mandated mental health assessment and a brief period of counseling with psychologist Suzanne Kunkle, Ph.D., to regulate anxiety and improve her mood while she was a PGY1 resident in internal medicine in the Indiana Program. Applicant stated that she had "panic-like symptoms" and "difficulty with concentration and memory" and decision-making. (Exhibit 13.) Subsequently, in June 2012, Applicant underwent a one-time outpatient psychiatric assessment by Jeff S. Seaman, M.D., while she was a pathology resident in the Oklahoma Program. Dr. Seaman provided her with a referral to a psychotherapist for "general mentoring and enhanced mindfulness." (Exhibit 11.)

11. Richard Perla, Ph.D., LMFT, diagnosed Applicant with Post-Traumatic Stress Disorder (PTSD), with depressive and anxiety symptoms, on January 28, 2015. Dr. Perla recommended that Applicant participate in individual weekly psychotherapy sessions for six months.

12. Applicant had multiple clinical performance problems while a PGY1 resident in the Indiana Program. Deficiencies in her performance were well documented by several evaluators on her clinical rotations and spanned multiple competency domains. Applicant's most consistent deficiencies were in the areas of organizing and synthesizing clinical information, presenting cases verbally, time management and efficiency, and accepting constructive feedback. As a result, she received only five-and-one-half months of credit at a marginal rating for her eight months in the residency program, and resigned from the Indiana Program on February 9, 2011. The Indiana Program placed limitations on Applicant's work. Due to concerns about her inability to adequately care for or admit a full patient load on a continuous basis, schedule changes were made to place Applicant on rotations where she would not experience the full patient case load, as her peers managed to do on a continuous basis. Additionally, Applicant was granted small stretches of time off from scheduled work, on an as-needed basis, in order to deal with stressors.

13a. Applicant had multiple clinical performance problems during her time as a pathology resident in the Oklahoma Program from July 2012 to June 2014. These deficiencies in her performance were well documented by several evaluators on her clinical rotations and spanned multiple competency domains. Dr. Servis reviewed over 150 pages of evaluations of Applicant's performance in her postgraduate training. He noted that she was rarely rated as "proficient" or "accomplished" by evaluators in specific milestones across six core graduation competencies for residency training in pathology. Dr. Servis opined that Applicant had significant mental health and clinical performance problems in medical school, as well as in her postgraduate training in the Indiana Program and the Oklahoma Program. He noted that there is a pattern of chronic instability in Applicant's personal life. As a result, she took multiple leaves of absence to manage personal stress due to financial, relational, and academic issues in medical school and during residency.

13b. At the Oklahoma Program, Applicant's most consistent deficiencies were identical to those at the Indiana Program, with the addition of concerns about medical knowledge in selected areas of pathology and concerns about professionalism. These deficiencies led to issuance of a corrective action plan on November 20, 2013. The plan contained four specified performance deficiencies and six required corrective actions. When Applicant failed to successfully remediate these deficiencies, her contract was not renewed and her training in the Oklahoma Program ended in June, 2014.

13c. Dr. Servis noted that Applicant's overall performance while a resident in the Oklahoma Program was summarized in December 2013 by Dr. Gregory Blakey, Director of Clinical Pathology. Dr. Blakey stated that:

Dr. Garza's performance has been marked by a pattern of unprofessional behaviors and difficulty interpreting data and integrating conceptual information. Dr. Garza's inability to constructively take feedback exacerbates her performance deficits. Furthermore, her lack of insight is particularly troubling, as becoming competent in the practice of pathology requires a resident to 'know what they don't know.' These

shortcomings portend a poor prognosis for effectively navigating the practice of clinical pathology, with its complex managerial, medical, scientific and regulatory spheres . . .

In sum, I do not believe that Dr. Garza will be able to practice independently as a pathologist, barring large improvements in her ability to interpret lab data, recognize the limits of her knowledge, use good judgment, and behave more professionally. Therefore, if Dr. Garza does not make significant progress in remedying these deficiencies this academic year, I would recommend that she be released from our residency program.

(Exhibits 18 and 27.)

14. Dr. Servis was particularly concerned by the consistency of Applicant's unsatisfactory performance evaluations across two different residency programs, as well as the chronic and persistent nature of her deficiencies: Dr. Servis noted that Applicant minimized these issues in her correspondence with the Board.

15. Dr. Servis noted that Applicant had failed to disclose to the Board that the Indiana Program had placed limitations on her during her training. In the April 2011 application she submitted to the Board, Applicant answered "no" when asked whether any limitations or special requirements had been placed upon her for clinical performance or any other reason. Her program director at the Indiana Program described such limitations in his May 11, 2011 letter to the Medical Board. Applicant also failed to disclose to the Board that she had undergone a mandated mental health assessment while a resident in the Indiana Program. Dr. Servis noted that in her June 22, 2011 response to follow-up inquiries from the Board, Applicant attributes these discrepancies in her reporting to "misunderstandings." Dr. Servis opined that when these discrepancies are paired with the multiple professionalism lapses noted in her evaluations during Applicant's postgraduate training, a reasonable conclusion is to see these as another example of her professionalism deficiencies.

16. Dr. Servis opined that Applicant should not be issued an unrestricted Physician's and Surgeon's License, based on the fact that during her postgraduate training, Applicant did not receive evaluations documenting that she consistently achieved the core competencies necessary to safely assume the unrestricted practice of medicine. While she did complete two years of postgraduate training in the Oklahoma Program, these were not "satisfactory" continuous training months and she failed to successfully complete the Corrective Action Plan, which led to the non-renewal of her contract. Her five-and-one-half months of credit in the Indiana Program were rated as "marginal" and do not constitute the required twelve continuous months. Accordingly, Applicant does not meet the requirements for California medical licensure. She failed to satisfactorily complete two years of ACGME-accredited postgraduate training, nor did she fulfill the requirement that each year of postgraduate training must consist of twelve months of satisfactory continuous training within the same program. Additionally, Applicant has a documented pattern of consistent and diagnosed mental health problems which have contributed to her performance problems and remain insufficiently addressed at this time.



17. Dr. Servis further opined that Applicant should not be issued a probationary license. Given the chronicity and extent of her deficiencies in residency training, which at times encompass all six of the six ACGME core competencies, further postgraduate training is needed to remediate these deficiencies to the level where she can practice safely without supervision. Of particular concern to Dr. Servis are Applicant's professionalism deficiencies, including her failure to disclose to the Board limitations placed on her during both of her residency programs, and a mental health assessment requirement placed on her during her residency training in the Indiana Program.

18. Dr. Servis opined that the nature and extent of her deficiencies is too great to allow Applicant to treat California consumers outside of the highly structured and supervised environment of a residency training program.

19. In his report, Dr. Servis noted that because Applicant is close to the three year limit for ACGME- approved postgraduate training without a license for graduates of international medical schools,<sup>2</sup> acceptance into a California postgraduate training program may prove to be elusive at this point. Dr. Servis proposed that a limited probationary license be granted, after Applicant has completed six months of weekly psychotherapy sessions for her diagnosed PTSD, on the condition that Applicant be accepted into postgraduate training to complete her residency training, and that the probationary license remain in effect only while she remains in an ACGME-approved residency program in California. If Applicant were to successfully complete the residency training program and be deemed competent to practice unsupervised by her residency program at the time of her graduation, Dr. Servis proposed that the probationary status be lifted and an unrestricted license be issued.

#### *Applicant's Evidence*

20. Applicant testified at the hearing and was respectful of the Board and these proceedings. She is 44 years old. She got married in 2010 and has two children, ages 19 and five. Applicant currently works as a registered nurse (RN). She first became licensed as an RN in Indiana in 1998 and became a licensed RN in California in 2001. Applicant works as an RN in the emergency room at Martin Luther King, Jr. Community Hospital in Los Angeles. She has never had any discipline against her RN license and has received recognition for her work as an RN.

21. Applicant "really wanted to go to medical school" since nursing "wasn't enough intellectually." In 2005, she began medical school at American University of the Caribbean in St. Maarten. She took three leaves of absence to deal with a rental home she owned and to

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<sup>2</sup> An international medical graduate (IMG) must complete 24 months of training to be eligible for licensure by the Board. The final 12 months must be continuous and in a single program. Further, an IMG must be licensed by the end of the 36th month of training. In calculating these months, the Board counts all approved ACGME training, whether or not credit was granted. [http://www.mbc.ca.gov/Applicants/Physicians\\_and\\_Surgeons/](http://www.mbc.ca.gov/Applicants/Physicians_and_Surgeons/)

work as a nurse. Applicant graduated from medical school in February 2010, number six out of 70 students.

22. In the Indiana Program, Applicant worked at a busy hospital. She requested a schedule change to enable her to do non-call rotations in order to enable her to care for her then 12-year-old son, who was staying with her that summer. Applicant testified that the Indiana Program did not tell her they had concerns about her ability to handle a full patient load nor was she informed that any limits had been placed on her. She claimed that was the reason she did not check "yes" to those questions on the Board application.

23. Applicant took a leave of absence during the Indiana Program. She asserted that she ultimately resigned from the Indiana Program in February 2011 because she "didn't see eye to eye with the program director." She opined that the evaluators were "harsh" because they "were trying to defend themselves as to why [she] had resigned during their rotation." She admitted that she "was a little defensive [to criticism] in the beginning."

24. Applicant attributed her difficulties in the Indiana Program and Oklahoma Program to a myriad of personal, financial, and relational problems, including a new marriage, pregnancy, the stress of a long distance relationship with her husband who was living in California, and tenants who did not pay rent and negatively impacted her credit rating.

25. Applicant insisted that most of her postgraduate performance evaluations were positive and that she was doing very well in her residencies. The Oklahoma Program was a four year pathology residency program, but Applicant only remained in the program from June 2012 until June 2014. She "grew to love pathology" and would like to continue in that field. She contended that her difficulties at the Oklahoma Program occurred after she filed a complaint at the end of her first year of training with the Office of Compliance at Oklahoma University for sexual harassment and gender discrimination against a physician affiliated with the Oklahoma Program. She believes that the Associate Dean and her Program Director orchestrated a series of negative evaluations from faculty attending physicians in retaliation for her complaint. Applicant asserts that "out of nowhere" she was given a corrective action plan. However, Applicant's performance evaluations showed deficiencies, both before and after the harassment complaint.

26. Applicant characterizes as "misunderstandings" her failure to disclose in her April 2011 application that limitations had been placed on her during her training in the Indiana Program or that she had undergone a mandated mental health assessment while a resident at Indiana University.

27. Applicant "always saw someone" for therapy. She voluntarily sought treatment from Dr. Perla and has continued to see him once or twice per month. Dr. Perla recommended that she see him weekly, but she was financially unable to do so because the amount of her co-pays had increased. Dr. Perla has helped Applicant address her PTSD, which is "not severe." She attributes this condition to her experiences in the Oklahoma Program and to "problems with [her] career now."

## LEGAL CONCLUSIONS

1. Business and Professions Code (Code) sections 475, subdivision (a)(4), and 480, subdivision (a)(3)(A), provide that a license may be denied for commission of any act which, if done by a licensee, would be grounds for license suspension or revocation.

2. Code sections 475, subdivision (a)(1), and 480, subdivisions (a)(2) and (d), provide that a license may be denied for knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

3. Code section 480, subdivision (a)(2), provides that the Board may deny a license on the grounds that the applicant has done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself.

4. Code section 2221, subdivision (a), provides that the Board may deny a physician's and surgeon's certificate to any applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of his or her license.

5. Code section 2234, subdivisions (a), (d), (e), and (f), provide that the Board shall take action against any licensee who is charged with unprofessional conduct. Unprofessional conduct includes incompetence, commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon, and any conduct which would warrant the denial of a certificate.

6. Unprofessional conduct under Code section 2234 is conduct which breaches the rules of ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal. App.3d 564, 575).

7. Code section 2096, subdivisions (b) and (c), provide that an applicant whose professional instruction was acquired in a country other than the United States or Canada shall have satisfactorily completed at least two years of postgraduate training, which includes at least four months of general medicine in an approved postgraduate training program.

8. An applicant for a license bears the burden of proving fitness for the requested license. (*Coffin v. Department of Alcoholic Beverage Control* (2006) 139 Cal.App.4th 471.) The standard of proof in such matters is the preponderance of the evidence. (See Evid. Code, § 115.)

9. Cause exists to deny the application for a physician's and surgeon's certificate pursuant to Code section 2096 in that Applicant has not completed the required minimum of four months of general medicine training as part of her postgraduate training program. Both the Indiana Program and Oklahoma Program certified that Applicant has not completed the required minimum of four months of general medicine training as part of their postgraduate training programs, as set forth in Factual Findings 2-19.

10. Cause exists to deny the application for a physician's and surgeon's certificate pursuant to Code sections 475, subdivision (a)(4), 480, subdivision (a)(3)(A), and 2234, subdivision (d), in that Applicant is guilty of unprofessional conduct and incompetence, which if done by a licensee, would be grounds for suspension or revocation of license, as set forth in Factual Findings 2-19.

11. Cause exists to deny the application for a physician's and surgeon's certificate pursuant to Code sections 475, subdivision (a)(1); 475, subdivision (a)(4); 480, subdivisions (a)(2) and (d); 2234, subdivisions (e) and (f), in that Applicant is guilty of conduct which, if done by a licensee, would be grounds for suspension or revocation of licensure, as set forth in Factual Findings 2-19.

12. During her postgraduate training, Applicant did not receive evaluations documenting that she consistently achieved the core competencies necessary to safely assume the unrestricted practice of medicine. While she did complete two years of postgraduate training in the Oklahoma Program, these were not "satisfactory" continuous training months and she failed to successfully complete the corrective action plan, which led to the non-renewal of her contract. Her five-and-one-half months of credit in the Indiana Program were rated as "marginal" and did not constitute twelve continuous months. Accordingly, Applicant does not currently meet the requirements for an unrestricted California medical license. She did not satisfactorily complete two years of ACGME-accredited postgraduate training, and she did not fulfill the requirement that each year of postgraduate training must consist of twelve months of satisfactory continuous training within the same program. Additionally, Applicant has PTSD, which may not yet have been sufficiently addressed. However, based on the evidence presented, PTSD does not appear to have negatively impacted her ability to competently function as an RN. Applicant also failed to disclose to the Board limitations and a mental health assessment requirement placed on her during her residency training. She did disclose other potentially negative information, such as taking leaves of absence. Protection of the public is the highest priority for the Board. The order that follows is appropriate and necessary for the protection of the public, while aiding in Applicant's rehabilitation.

## ORDER

Shalena Garza's application for a full and unrestricted Physician's and Surgeon's Certificate is denied. However, a limited probationary license is granted for a period of three years on the condition that Applicant be accepted into, and successfully complete, a postgraduate residency training program in California during that timeframe. The probationary license shall remain in effect only while Applicant remains in an ACGME-approved residency program in California. If Applicant successfully completes the residency training program within three years, and is deemed competent to practice unsupervised by her residency program at the time of her graduation, the probationary status shall be lifted and Applicant shall be granted a full and unrestricted license.

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### 1. Prohibited Practice

During probation, Applicant is prohibited from practicing outside of an ACGME-approved residency program in California. If Applicant fails to satisfactorily complete the residency program within three years, she shall cease the practice of medicine within three (3) calendar days after being notified by the Board or its designee.

### 2. Psychotherapy

Within 60 calendar days of the effective date of this Decision, Applicant shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, Applicant shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Applicant shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Applicant shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require Applicant to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, Applicant is found to be mentally unfit to undertake the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over her license and the period of probation shall be extended until the Board determines that she is mentally fit to undertake the practice of medicine without restrictions.

Applicant shall pay the cost of all psychotherapy and psychiatric evaluations.

### 3. Notification

Within seven (7) days of the effective date of this Decision, Applicant shall provide a true copy of this Decision and Statement of Issues to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to her, at any other facility where she engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to her. Applicant shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

#### 4. Supervision of Physician Assistants

During probation, Applicant is prohibited from supervising physician assistants.

#### 5. Obey All Laws

Applicant shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any payments and other orders.

#### 6. Quarterly Declarations

Applicant shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Applicant shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

#### 7. General Probation Requirements

**Compliance with Probation Unit:** Applicant shall comply with the Board's probation unit and all terms and conditions of this Decision.

**Address Changes:** Applicant shall, at all times, keep the Board informed of her business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

**Place of Practice:** Applicant is prohibited from practicing outside of an ACGME-approved residency program in California.

**License Renewal:** Applicant shall maintain a current and renewed California physician's and surgeon's license.

**Travel or Residence Outside California:** Applicant shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event she should leave the State of California to reside or to practice, Applicant shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

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#### 8. Interview with the Board or its Designee

Applicant shall be available in person upon request for interviews either at her place of business or at the probation unit office, with or without prior notice throughout the term of probation.

#### 9. Non-practice While on Probation

Applicant shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of her return to practice. Non-practice is defined as any period of time she is not practicing medicine in an ACGME-approved residency program in California. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

Applicant's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve Applicant of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

#### 10. Completion of Probation

Applicant shall comply with all financial obligations (e.g., probation costs) not later than 120 calendar days prior to the completion of probation. If Applicant successfully completes an ACGME-approved residency program in California within three years, and is deemed competent to practice unsupervised by her residency program at the time of her graduation, the probationary status shall be lifted and Applicant shall be granted a full and unrestricted license.

#### 11. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If Applicant violates probation in any respect, the Board, after giving her notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Applicant during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

#### 12. License Surrender

Following the effective date of this Decision, if Applicant ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, she may request to surrender her license. The Board reserves the right to evaluate her request and to exercise its discretion in determining whether or not to grant the request, or to

take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Applicant shall within 15 calendar days deliver her wallet and wall certificate to the Board or its designee and she shall no longer practice medicine. Applicant will no longer be subject to the terms and conditions of probation. If she re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

### 13. Probation Monitoring Costs

Applicant shall pay the costs associated with probation monitoring each year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

DATED: March 1, 2017

DocuSigned by:  
*Laurie Pearlman*  
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LAURIE R. PEARLMAN  
Administrative Law Judge  
Office of Administrative Hearings



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FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO October 27, 2015  
BY: JTECHAK ANALYST

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues  
11 Against:

Case No. 800-2015-012363

12 **SHALENA GARZA**

**STATEMENT OF ISSUES**

13 **14454 Plantana Drive**  
14 **La Mirada, CA 90638**

15 Applicant.

17 Complainant alleges:

18 PARTIES

19 1. Kimberly Kirchmeyer (Complainant) brings this Statement of Issues solely in her  
20 official capacity as the Executive Director of the Medical Board of California, Department of  
21 Consumer Affairs.

22 2. The Medical Board of California, Department of Consumer Affairs ("Board")<sup>1</sup>  
23 received a Physician and Surgeon's License application from Applicant Shalena Garza  
24 ("Applicant"), which was notarized on May 2, 2014. In her application, Applicant certified under  
25 penalty of perjury to the truthfulness of all statements, answers, and representations in the  
26

27 <sup>1</sup> The term "Board" means the Medical Board of California.  
28

1 application. The Board denied the application on March 10, 2015. Applicant requested a hearing  
2 on March 10, 2015.

3 JURISDICTION

4 3. This Statement of Issues is brought before the Board, under the authority of the  
5 following laws. All section references are to the Business and Professions Code unless otherwise  
6 indicated.

7 4. Section 475 of the Code states in pertinent part, that:

8 "(a) Notwithstanding any other provisions of this code, the provisions of this division shall  
9 govern the denial of licenses on the grounds of:

10 "(1) Knowingly making a false statement of material fact, or knowingly  
11 omitting to state a material fact, in an application for a license.

12 "..."

13 "(4) Commission of any act which, if done by a licentiate of the business or  
14 profession in question, would be grounds for suspension or revocation of license.

15 5. Section 480 of the Code states in pertinent part, that:

16 "(a) A board may deny a license regulated by this code on the grounds that the applicant  
17 has one of the following:

18 "..."

19 "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially  
20 benefit himself or herself, or another, or substantially injure another.

21 "(3) (A) Done any act that if done by a licentiate of the business or profession in question,  
22 would be grounds for suspension or revocation of license.

23 "..."

24 "(d) A board may deny a license regulated by this code on the ground that the applicant  
25 knowingly made a false statement of fact that is required to be revealed in the application for the  
26 license."

27 6. Section 2221 of the Code states in pertinent part, that:

1       “(a) The board may deny a physician's and surgeon's certificate to any applicant guilty of  
2 unprofessional conduct or of any cause that would subject a licensee to revocation or suspension  
3 of his or her license.

4       7.       Section 2234 of the Code, states in pertinent part, that:

5       “The board shall take action against any licensee who is charged with unprofessional  
6 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not  
7 limited to, the following:

8       “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the  
9 violation of, or conspiring to violate any provision of this chapter.

10       “...”

11       “(d) Incompetence.

12       “(e) The commission of any act involving dishonesty or corruption that is substantially  
13 related to the qualifications, functions, or duties of a physician and surgeon.

14       “(f) Any action or conduct which would have warranted the denial of a certificate.

15       8.       Unprofessional conduct under section 2234 of the Code is conduct which breaches the  
16 rules of ethical code of the medical profession, or conduct which is unbecoming to a member in  
17 good standing of the medical profession, and which demonstrates an unfitness to practice  
18 medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal. App.3d 564, 575).

19       9.       Section 2096 of the Code states in pertinent part, that:

20       “...”

21       “(b) An applicant applying pursuant to Section 2102 shall show by evidence satisfactory to  
22 the board that he or she has satisfactorily completed at least two years of postgraduate training.

23       “(c) The postgraduate training required by this section shall include at least four months of  
24 general medicine and shall be obtained in a postgraduate training program approved by the  
25 Accreditation Council for Graduate Medical Education (ACGME) or the Royal College of  
26 Physicians and Surgeons of Canada (RCPSC).

27       ///

28       ///

## STATEMENT OF FACTS

10. On November 4, 2009, the Board received an "Initial and Update Application for Physician's and Surgeon's License or Postgraduate Training Authorization Letter," from applicant Shalena Garza ("Applicant"). On the application, in response to the following question: "Were any limitations or special requirements placed upon you for clinical performance, discipline, or for any other reason?," Applicant checked the "no" box. On the last page of the application, Applicant initialed the box next to the statement, "I understand that falsification or misrepresentation of any item or response on this application or any attachment hereto is a sufficient basis for denying or revoking a license." Applicant signed the application under the penalty of perjury, declaring that all of the information contained in the application was true and correct, and her signature was notarized.

11. On April 28, 2011, the Board received an updated "Initial and Update Application for Physician's and Surgeon's License or Postgraduate Training Authorization Letter." On the application in response to the following question: "Were any limitations or special requirements placed upon you for clinical performance, discipline, or for any other reason?," Applicant checked the "no" box.

12. On May 11, 2011, the Indiana University School of Medicine Director indicated that they had placed a limitation on Applicant stating: "due to concerns about [Applicant's] inability to adequately care for or admit a full patient load on a continuous basis schedule changes were made to place [Applicant] on rotations where she would not experience a full patient case load as managed by her peers on a continuous basis."

13. The Board received a Physician's and Surgeon's License application from Applicant, which was notarized on May 2, 2014. In the application, Applicant answered "yes" to questions 24, 25, 27, 31 and 32, all of which were contained in the section of the application with the heading "Unusual Circumstances During Postgraduate Training" and dealt with having received partial or no credit for a postgraduate training program. The unusual circumstances might include the following reasons for receiving partial or no credit: taking a leave of absence or break from postgraduate training, resigning from a program, having practice limitations placed upon her due

1 to clinical performance, professionalism, medical knowledge, discipline, and for having a  
2 postgraduate training program not be renewed or offered, and/or for any other reason.

3 14. Subsequent to receipt of Applicant's application for licensure, the Board received a  
4 Certificate of Completion of ACGME Postgraduate Training from the Indiana University School  
5 of Medicine, in which the following facts regarding the Applicant's performance in the Indiana  
6 University Internal Medicine Residency Program (hereafter, "Indiana Program") were provided:  
7 The Applicant began her postgraduate program training as a PGY1 resident on June 24, 2010; due  
8 to concerns about Applicant's ability to adequately care for or admit a full patient load on a  
9 continuous basis, schedule changes were made to place Applicant in rotations where she would  
10 not experience the full patient care load as managed by her peers on a continuous basis; the  
11 Indiana Program required that Applicant seek psychological counseling/assessment in relation to  
12 her stressors when she was noted to not be functioning well as compared to her peers; Applicant  
13 took several leaves of absences to deal with stressors; she did not receive full credit for her time  
14 in the Indiana Program as she received five and one-half month credit at a marginal rating; she  
15 resigned from the program on February 9, 2011. The Indiana Program also certified that  
16 Applicant had not completed the required minimum of four months of general medicine as part of  
17 its postgraduate training program.

18 15. The Indiana Program provided the Board with documentation of its concerns with the  
19 Applicant's professionalism and competence. The Applicant provided the Board with her own  
20 explanations of her performance and the events that occurred during her participation in the  
21 Indiana Program.

22 16. Subsequent to receipt of Applicant's application for licensure, the Board received a  
23 Certificate of Completion of ACGME Postgraduate Training from the University of Oklahoma  
24 Health Science Center, in which the following facts regarding the Applicant's performance in the  
25 Oklahoma Anatomic Pathology/Clinical Pathology Residency Program (hereafter, "Oklahoma  
26 Program") were provided: The Applicant began her postgraduate program training as a resident  
27 on July 1, 2012; on November 20, 2013, Applicant was placed on a corrective action plan for  
28 remediation and directed to improve her fund of medical knowledge and knowledge application;

1 on March 3, 2014, Applicant was removed from clinical pathology call but not anatomic call; on  
2 June 8, 2014, Applicant's clinical call was reinstated but she was not placed on the call schedule  
3 for either clinical or anatomic call prior to her resignation on June 30, 2014; on February 28,  
4 2014, Applicant was informed of the Oklahoma Program's decision to not renew her contract  
5 effective June 30, 2014; the Oklahoma Program accepted Applicant's resignation effective June  
6 30, 2014. The Oklahoma Program also certified that Applicant had not completed the minimum  
7 requirement of four months of general medicine as part of its postgraduate training program.

8 17. The Oklahoma Program provided the Board with documentation of its concerns with  
9 the Applicant's professionalism and competence. The Applicant provided the Board with her  
10 own explanations of her performance and the events that occurred during her participation in the  
11 Oklahoma Program.

12 18. Review of the Applicant's Application, the reports from the Indiana Program and  
13 Oklahoma Program, and her explanations of her performance, and the events that occurred during  
14 her participation in both programs, demonstrate serious global deficiencies. Moreover, these  
15 sources demonstrated that the Applicant was unable to remediate these serious global deficiencies  
16 despite being afforded the opportunities to do so. The Board denied Applicant's application for a  
17 Physician's and Surgeon's Certificate on March 10, 2015.

18 19. On March 10, 2015, Applicant requested an administrative hearing.

19 **FIRST CAUSE FOR DENIAL OF APPLICATION**

20 (Failure to Complete Required Postgraduate Training)

21 20. The facts alleged in paragraphs 14 and 16, above, are incorporated herein by reference  
22 as if fully set forth.

23 21. Applicant's application is subject to denial under section 2096 of the Code in that she  
24 has not completed the required minimum of four months of general medicine training as part of  
25 her postgraduate training program. Both the Indiana Program and Oklahoma Program certified  
26 that Applicant has not completed the required minimum of four months of general medicine  
27 training as part of their postgraduate training programs.

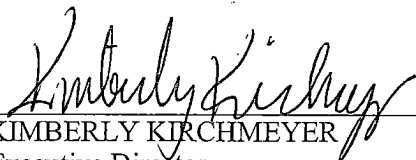
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4. Taking such other and further action as deemed necessary and proper.

DATED: October 27, 2015

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
*Complainant*

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